HORACE H. ALVORD IV

IBLA 82-1267 Decided March 28, 1984

Appeal from decision of the Eastern States Office, Bureau of Land Management, canceling oil and gas lease ES 22212.

Vacated and remanded.

1. Oil and Gas Leases: Cancellation

Where a noncompetitive oil and gas lease erroneously reflects a lesser mineral interest in federally owned lands than is actually held by the United States, but where the lease has not been issued in contravention of any regulatory or statutory authority, it need not be canceled, but may be amended to reflect that all of the available Federal interest in the land has, in fact, been leased.

Wilfred Plomis, 62 IBLA 162 (1982), modified in part.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant; Robert J. Uram, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Sante Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Horace H. Alvord IV has appealed from a decision dated July 30, 1982, of the Eastern States Office, Bureau of Land Management (BLM), canceling non-competitive acquired lands lease ES 22212. The lease, for a stated 50 percent fractional interest in the acquired oil and gas deposits underlying the E 1/2 SW 1/4 NW 1/4 and the W 1/2 SW 1/4 sec. 4, T. 22 N., R. 4 W., Louisiana meridian, Louisiana, was issued to appellant effective March 1, 1980.

The lands in this lease were formerly embraced in over-the-counter lease offer ES 21249 filed by Wilfred Plomis on April 24, 1979. BLM's rejection of Plomis' offer on February 29, 1980, was affirmed by the Board in Wilfred Plomis, 62 IBLA 162 (1982). In Plomis, the Board found that it was error for BLM to issue Alvord the lease without first adjudicating Plomis' offer. The Board concluded also that BLM had no authority to issue a fractional interest lease because the entire interest was already in the United States. In the Plomis decision the Board directed BLM to cancel the lease issued to Alvord and to refund all rentals and filing fees. The factual background of this lease and the reasons for the Board's conclusions appear at pages 163-64 of the Plomis decision.

0]&The pertinent facts concerning this appeal are succinctly stated in the statement of reasons:

By deed of April 24, 1969, the United States acquired the W 1/2 SW 1/4 and E 1/2 SW 1/4 NW 1/4, Section 4, Township 22 North, Range 4 West, Louisiana Meridian, Louisiana. The conveyance was subject to "[a] reservation by the Grantors of 1/2 of all mineral rights for a period of 10 years from date of deed, or so long as oil, gas or other minerals may be produced therefrom."

The United States issued an oil and gas lease for its 50% mineral interest, ES 11112, which terminated August 1, 1978.

On April 24, 1979, the date on which the 50% mineral reservation was due to expire, Wilfred Plomis filed a lease offer, ES 21249, apparently for the 50% interest that vested on that day.

In August 1979, on the basis of termination of former lease ES 11112, the Bureau of Land Management posted the lands that had formerly been in the lease, as Parcel ES-187 in simultaneous oil and gas (SOG) List No. 79-8. The description appearing in the SOG list was:

> Louisiana, Claiborne Parish, Kisatachie N. F.
> T. 22 N., R. 4 W., Louisiana Meridian
> Sec. 4: E 1/2 SW 1/4 NW 1/4, W 1/2 SW 1/4.
> U.S. Interest 50%
> Containing 86.46 acres (Rental $87.00).

The offer of Horace H. Alvord IV was drawn with first priority for this parcel, out of a total of 135 applications. A lease issued to Alvord pursuant to this offer on February 14, effective March 1, 1980.

On February 29, 1980, the Eastern States Office issued a decision rejecting lease offer ES 21249 of Wilfred Plomis (who had meanwhile, on February 3, 1980, filed a second offer for the same lands, ES 25223, that stated with greater specificity that the 50% interest sought was that which had vested in the United States on April 24, 1979). The basis of rejection was the unavailability of the land for over-the-counter filing at the time that the Plomis offer was filed, because of the land's having formerly been leased and hence being subject only to SOG filings.

On appeal by Plomis, the Board of Land Appeals upheld the rejection of his offer, 62 IBLA 162 (March 8, 1982), but for different reasons than those given in the Eastern States Office decision. Rather than supposing that Plomis was seeking the same 50% interest that had previously been leased, the Board recognized that his offer was for the other 50% that had just vested, but held that since the interests had merged he could only apply for the entire interest held by the United States,

> and that 43 CFR 3112.1-1 precluded leasing under 43 CFR Subpart 3111 of any lands (as distinquished from interests) that had previously been included in terminated leases.
>
> The Board went beyond this, however, to consider the lease for the lands in question of Horace H. Alvord IV, who was not a party in the case. The Board declared this lease to have issued improperly, and directed the Eastern States Office to cancel it and to refund all rentals and filing fees. On July 30, 1982, the Eastern States Office issued a decision cancelling Alvord's lease pursuant to the Board's directive, and it is from that decision that this appeal is brought. [Emphasis in original.]

In the decision now before us, BLM acknowledges the Alvord lease was erroneously issued for a fractional interest. In accordance with the Board's instruction in Plomis, supra, the lease was canceled. The concluding paragraph of the BLM decision states: "This action is based on a decision of the Interior Board of Land Appeals and constitutes the final action of the Department from which no administrative appeal may be taken." Obviously, Alvord appealed the cancellation just the same, as he was entitled to do, as a party adversely affected. The record of the Plomis case reflects that Alvord was neither served with a copy of the decision under appeal in that case nor named as an adverse party, although he held a conflicting lease. Since Alvord was not a party to the Plomis appeal, the Board's decision in Plomis was not binding upon Alvord so far as it purported to adversely affect his rights without affording him an opportunity to be heard. See Conoco, Inc., 75 IBLA 83 (1983).

In his statement of reasons, appellant contends that the consequence of erroneously issuing a fractional interest lease should not be cancellation of his lease, but rather an amendment to include the entire available interest. Appellant argues that since a lease could be amended pursuant to 43 CFR 3110.1-5 (1982) to include lands omitted for any reason, nothing should stand in the way of amending his lease to add the remaining interest in the lands already included.

BLM now moves this Board to remand the appeal to allow BLM to vacate its decision canceling the Alvord lease and to recognize that the lease embraces 100 percent of the Federal mineral interest. BLM asserts that cancellation would serve no useful purpose and that reinstatement of the lease would harm no one. BLM represents that appellant has no objection to the motion to remand.

[1] The administrative error here before the Board appears susceptible to the remedial action proposed. The lease itself provides, at item 3: "If the interest of the United States proves to be larger or smaller than the interest stated, the rentals and royalties payable by the lessee shall be increased or decreased proportionately." 1/ In Irwin Rubenstein, 3 IBLA 250

1/ Appellant's lease is on form 3110-3 (Mar. 1978). Under the current regulations in effect since 1976, the rental rate is no longer reduced for fractional interest leases. 43 CFR 3103.2-1(b), 48 FR 33667 (July 22, 1983) (formerly codified at 43 CFR 3103.3-3).

(1971), the Board adjudicated a similar situation involving a noncompetitive acquired lands lease in which the Federal mineral interest was not correctly stated. The Board concluded that the lessee's failure to accurately express the Federal mineral interest was not fatal, because the offer by its terms, was a commitment to lease "any or all" of the lands described in it, which included "the total extent of the Federal interest in such lands, as no authority exists for the leasing of any lesser interest." Rubenstein, supra at 253, citing Duncan Miller, A-29425 (July 23, 1963).

Appellant, as a lessee rather than an offeror, has legal and equitable rights as well as a vested interest in lease ES 22212. 2/ These rights and interests outweigh any corrective administrative objectives which might be served if the cancellation were allowed to stand. Moreover, no circumstances are apparent which compel cancellation pursuant to statute or regulation. It is clear from the record on appeal that no advantage accrues to anyone in consequence of this cancellation and that no one is prejudiced by restoration of the lease to appellant. The motion by the parties to vacate the cancellation of lease ES 22212 is granted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of BLM's is vacated and the record is remanded to the Eastern States Office for further action consistent with this opinion. The decision in Wilfred Plomis, supra, is modified accordingly.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ A comparison of the status of a lessee to that of an offeror appears in Christiansen Oil, Inc., 37 IBLA 52, 59-61 (1978) (dissenting opinion), rev'd Christiansen Oil & Gas, Inc. v. Andrus, Civ. No. C78-257K (D. Wyo. Aug. 20, 1979).